

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
DEC 12 2001

OFFICE OF
MANAGING DIRECTOR

86-245

Ms. Kay Zwerling
Zwerling Broadcasting System, Ltd.
2300 Portola Drive
Santa Cruz, California 95062

RE: Request for Reconsideration--Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA); Failure to Pay Regulatory Fee and Late Payment Penalties, KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 00000CDMC-99-034. Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 0009268835858007.

Dear Ms. Zwerling:

We reviewed your request dated July 13, 2001 seeking reconsideration of the Commission's two decisions denying Mr. Zwerling's request for waiver of fees and penalties due for both radio stations KSCO-AM and KOMY-AM. Specifically, our decisions of June 28, 2001, denied requests to waive or reduce the regulatory fee for radio station KSCO-AM for fiscal year (FY) 1999; to waive the penalty assessed but not paid for both KSCO-AM and KOMY-AM; and to waive or reduce the FY 2000 regulatory fees, which were paid for radio stations KSCO-AM and KOMY-AM.

Background

In summary, we denied the request to waive the FY 1999 regulatory fees for both stations on separate grounds that the fees remained unpaid and that there was no evidence shown of financial hardship. Mr. Zwerling's additional request to waive the late penalties for the FY 1999 regulatory fees was denied because Section 9(c)(1) of the Communications Act of 1934 (47 U.S.C. § 159(c)(1)) and the Commission's implementing Rules impose a 25% penalty of the amount of the fee which is not paid in a timely manner except where the delay is the result of verified bank error.¹ Finally, we dismissed that portion of Mr. Zwerling's request to waive or reduce the regulatory fees for FY 2000 because, among other things, Mr. Zwerling failed to meet the statutory basis of good cause shown for financial hardship.

¹ 47 CFR § 1.1164.

The Request for Reconsideration

The points you raise may be summarized fairly as asserting that Zwerling Broadcasting's two independent stations cannot compete with the likes of Clear Channel Communications, and that Zwerling Broadcasting lacked funds to pay the FY 1999 fee. Although it had to borrow money to pay the FY 2000 regulatory fees, the company is rebuilding its program schedule and expects to start making money to pay its bills. Finally, you inquire what you need to do to "prove [that the broadcasting company] honestly can't afford these fees."

Standards for Reconsideration

Your petition fails to meet the procedural standards for reconsideration. In regard to Mr. Zwerling's request dated March 28, 2000 for waiver of FY 1999 regulatory fees, we applied the Commission's Rule that "[w]aiver requests that do not include the required fees . . . will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." 47 CFR § 1.1166(c). We also noted that Congress requires that we collect late payment penalties under the circumstances. In that regard, we will not waive a late payment penalty unless the delay in receiving the fee payment resulted from verified bank error. Because Zwerling Broadcasting has never paid the fees, the limited exception based on verified bank error does not apply. Your request for reconsideration does not excuse Zwerling Broadcasting of its obligation to pay the delinquent fees and penalties. The Commission's rule on this matter states, "filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment."²

In our response, moreover, we specifically stated the requirements to demonstrate financial hardship in the following:

In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus even if a station loses money, any funds paid to principals, or deductions taken for depreciation or similar items are considered funds available to pay fees. Moreover, you must demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public. Finally, you must demonstrate how waiver of the fees in this case overrides the public's interest to collect the fees.

² 47 CFR § 1.1167(b); see also 47 U.S.C. § 405(a).

Ms. Kay Zwerling

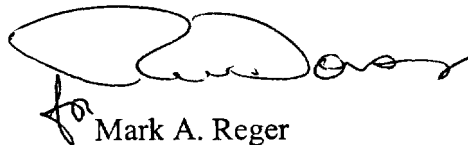
3.

Your petition for reconsideration does not comply with these requirements. In the absence of appropriate documentation, you have failed to establish a compelling case of financial hardship with respect to the regulatory fees for either FY 1999 or FY 2000.

Conclusion

Your requests for reconsideration of both decisions are denied. Payment of \$5,343.75 for FY 1999 regulatory fees for KSCO-AM and KOMY-AM, and associated penalties, is now due and should be submitted, together with a Form 159 (copy enclosed) within 30 days of the date of this letter. If the debt is not paid, it may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 CFR §§ 1.1161, 1.1164, 1.1940. If the Commission has to initiate collection efforts to obtain the amount owed, Zwerling may be charged the accompanying administrative costs. If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", with a stylized flourish at the end.

for Mark A. Reger
Chief Financial Officer

34
7/12/0

Rec'd
9/24/01
pnc

FROM FAX # 831-429-1003 (HOME #)
OR

FAX # 831-475-2967

TN # 831-475-1080
TO

FAX # 202-418-2843

ATTENTION: CYNTHIA

FROM KAY ZWERLING

RE: WAIVER OF FEES FOR

K'seo / Komy

SANTA CRUZ, CALIFORNIA

2001 JUL 12 4 23

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 28 2001

OFFICE OF
MANAGING DIRECTOR

Mr. Michael Zwerling
President
Zwerling Broadcasting System, Ltd.
2300 Portola Drive
Santa Cruz, CA 95062

RE: Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA); Failure to Pay Regulatory Fee and Late Payment Penalties, KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 00000CDMC-99-034.

Dear Mr. Zwerling:

We reviewed your request dated March 28, 2000 that the Commission waive or reduce the regulatory fee for radio station KSCO-AM (Santa Cruz, CA) for fiscal year (FY) 1999, and that the Commission waive the penalty assessed but not paid for KSCO-AM and KOMY-AM (La Selva Beach, CA). For the reasons stated below, we deny all aspects of your request for waiver of the required regulatory fees and all other stated forms of relief. Furthermore, this letter notifies you that you owe the United States \$5,343.75.

We wrote two letters on March 15 and 16, 2000 requesting that you pay the regulatory fees due for fiscal year (FY) 1999 and the assessed penalties that were due for radio stations KOMY-AM and KSCO-AM. Our letters stated that within 20 days you were required to either pay the fees and penalties or provide proof of the payment. You did not respond as requested, but instead on March 28, 2000, you requested a waiver of the fee due on radio station KSCO, and you broadly asserted that both stations were experiencing financial difficulties. We are dismissing your request because you remain delinquent in paying the FY 1999 fees and the associated penalties. Moreover, even if you had paid the fees and penalties, you failed to provide the proper base for establishing financial hardship or other relief. Our reasoning is provided below.

Your request for relief based on hardship does not provide any evidence of financial hardship for FY 1999. In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus even if a station loses money, any funds paid to principals, or deductions taken for depreciation or similar items are considered funds available to pay fees. You have not provided such showing for either station. Moreover, you did not demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public. Finally, you did not demonstrate how waiver of the fees in this case overrides the public's interest to collect the fees.

3

We also deny your request that the Commission waive the late penalties because the penalties are required by statute and you have not shown that the fees were paid on a timely basis. Congress mandated that we impose penalties on late paid fees. 47 U.S.C. §159(c). The Commission's implementing rule provides: "Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner." 47 CFR §1.1164.

6/28/01

Interest starts to accrue on this debt from the date of this letter, and if the debt remains unpaid for more than 90 days, we are required to add a penalty of 6 percent per year of the unpaid amount. 31 U.S.C. §3717. If we have to initiate collection effort to obtain the amount owed, we will charge you the accompanying administrative costs. You may avoid this additional interest, the additional penalties, and other administrative charges, if you pay the full amount within 30 days of the date of this letter accompanied with the required remittance form.

If this debt is not paid, we may transfer this debt to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or apply other administrative sanctions. 47 CFR §§1.1161; 1.1164; 1.1940. Any payment received more than 30 days after the date of this letter will be subject to interest, and you may incur additional penalties and administrative costs. Your payment of \$5,343.75 for FY 1999 regulatory fees for KSCO-AM and KOMY-AM, and associated penalties, is due now.

If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,



Mark Reger
Chief Financial Officer

7-11-01

Attention Mr. Reger:

Please, please re-consider your decision to deny our request to waive the 1999 fee, which was requested on September 8, 2000.

We independent stations are a dying breed because Clear Channel and other monopolies are buying up too many stations and taking away our anchor programs like Rush & Dr. Laura. We have served the public good for fifty-four years - also serving as the Emergency Broadcasting Station for the entire Monterey Bay Area. The 1999 fee was unpaid for lack of funds, but they were able to pay in full for 2000. We are now re-positioning our programming & expect to start making money to pay our bills. It would be tragic for independent stations to have to go dark & leave Clear Channel & other monopolies to dictate and control what the public will hear. Please wipe off this bill - & hopefully we will pay for 2001. Please cut us some slack. This request is coming from me (also an owner of KSCO/KOMY) because Michael is ill right now. With appreciation for your consideration,

Ken Zwerling 231-472-4270 / FAX 831-429

COVER PAGE

PAGE ONE OF TWO

ATTENTION:

TORI SLAPPY

FAX # 202-418-2843

FROM

KAY ZWERLING -

FAX # 831-429-1003

PHONE # 831-423-4079 (HOME)

" # 831-475-1080 (STATION)

RE: WAIVER OF FEES
FOR KSCO/KOMY
SANTA CRUZ, CA.

2001 JUL 13 P 2:11

RECEIVED



Mr. Mark Reger, CFO
FCC, Washington DC 20554

13 July 2001

Dear Mr. Reger:

Please please reconsider your decision to deny our requests to waive the 1999 and 2000 regulatory fees for KSCV and KOMY.

We small family-owned independent stations are a dying breed because Clear Channel and other monopolies are buying up too many stations *and strong nationally-syndicated programs* so they can take away the anchor programs of their competition.

While it's hard enough for independent stations to survive in such a difficult environment; the imposition of high regulatory fees will be the nail in our coffin.

We have served the public good for fifty-four years—also serving as the Emergency Broadcast Station for the entire Monterey Bay Area.

The 1999 fee was unpaid for lack of funds; in 2000 we were able to borrow funds for the 2000 fees in good faith that the Commission would be sympathetic to our plight. What do we have to do to prove to you that we honestly can't afford these fees? Go out of business?

Because Clear Channel recently took away the bulk of our prime time programming, we are now re-building our program schedule and expect to start making money to pay our bills. It would be tragic for independent stations to have to go dark and have Clear Channel and the other anti-competitive giants dictate and control what the public will hear.

Please write off the 1999 and 2000 bills—help us stay alive—hopefully we will pay for 2001. Please cut us some slack.

This request is coming from me—the eighty year old mother of Michael who is ill right now.

With appreciation for your consideration,

A handwritten signature in cursive script that reads "Kay Zwerling".

Kay Zwerling
831 423-4079 Voice 831 429-1003 Fax

2300 Portola Dr. Santa Cruz, CA 95062 • (831) 475-1080 FAX 475-2967